IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISIDICTION
WRIT PETITION NO. 8527 OF 2003

Shri.Bhagwat Bhanudas Payghan ..Petitioner

Vs.

Navnath Namdeo Mirgane
and Ors. ...Respondents

....

Mr.S.G.Kudle for Petitioner
Mr.I.M.Khairdi for Respondent Nos. 1 to 7
Mr.A.H.Palekar AGP for Respondent no.8

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CORAM : B.H.MARLAPALLE,J.
DATE : FEBRUARY 23,2005

P.C.:

1. Heard. Rule. Mr.Khairdi waives service of notice of Rule for respondent nos.1 to 7 and he undertakes to file his Vakalatnama for respondent no.2 within two weeks.

2. By consent of the parties, rule is taken up for final hearing.

3. Inquiry Proceedings No.2347 of 2000 came to be accepted by the Assistant Charity Commissioner vide his order dated 22.7.2002 and the present petitioner was opponent in the said proceedings. He therefore, filed an appeal before the Joint Charity Commissioner and it came to be registered as Appeal No. 16 of 2002. The present respondent nos.1 to 7 came to be impleaded as respondents in the said appeal and it

was allowed by the Joint Charity Commissioner at Latur vide his judgment and order dated 12.8.2003. The said decision has been further challenged by the present respondents in Appeal No.285 of 2003 pending before the District Court at Solapur and in the said appeal an application for interim relief filed at Exh.5 has been allowed by the impugned order dated 18.11.2003 passed by the learned IVth Addl. Dist. Judge at Solapur.

4. Mr.Kudle, the learned counsel for the petitioner by referring to the reasoning given by the lower appellate Court submitted that in every pending appeal, interim stay cannot be granted as a matter of course and while dealing with an application for interim relief the lower appellate Court is required to set out reasons. It is evident from the perusal of the impugned order that the Court below was influenced by the mere pendency of the appeal and the status quo order that was in operation. The Court also noted that the appeal would be finally disposed of without any adjournment on the stipulated date and the fact remains that even at present, the appeal is still pending. The Jt.Charity Commissioner had examined the record and more particularly the copies placed in the appeal decided by him at Exh.13/1/A and Exh.13/3/A. He recorded his findings that there was overwriting in the resolution no.4 purportedly passed

so as to submit the change report. He also referred to the documents at Exhs.21/1 to 21/4. The Jt.Charity Commissioner, therefore, held that the impugned order passed by the Asstt.Charity Commissioner allowing the change application, was erroneous and illegal. On the face of these findings, the impugned order cannot be sustained. At the same time, the pending appeal requires to be decided finally within a fixed period in the interest of all the parties concerned.

5. Hence, the petition is allowed and the impugned order dated 18.11.2003 passed by the learned IVth Addl.Dist. Judge, Solapur is hereby set aside. Application Exh.5 filed in Appeal No. 285 of 2003 is rejected. Appeal No.285 of 2003 shall be heard and decided as expeditiously as possible and in any case before 30th April, 2005. The learned counsel for the respective parties have furnished the undertaking before me that none of them would seek adjournments before the lower appellate Court. Status-quo as on the date the Jt.Charity Commissioner passed the order, would continue till the pending appeal is decided. It is clarified that appeal would be decided on its own merits and without being influenced by any of the observations made in this order.

[B.H.MARLAPALLE,J.]